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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,551	08/20/2003	Lisa Schmitt	P 1079.13001	6636
30615	7590	11/22/2005	EXAMINER	
BIRDWELL & JANKE, LLP 1100 SW SIXTH AVENUE SUITE 1400 PORTLAND, OR 97204			BUI, LUAN KIM	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 11/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/644,551

**Applicant(s)**

SCHMITT, LISA

**Examiner**

Luan K. Bui

**Art Unit**

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 13-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 6 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 6, the phrase “that corresponds to the elevation at which ice ... when melted” is vague, confusion and indefinite because claim 1 is directed to a container only without contents. In claim 7, the phrase “said container body” lacks proper antecedent basis.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spreen (1,688,887) in view of Fraenkel (6,311,500) and Shepherd (2,863,305) or Hughes (5,520,278). Spreen discloses in the embodiment of Figure 4, a storage container (11) for forming ice blocks comprising a plurality of compartments formed by removable partitions (17) defining respective maximum filling elevations thereof (top edges of the compartments) in a stable orientation of the container. Spreen also discloses the other claimed limitations except for the compartments comprise at least one fill level with indicia disposed below the maximum filling elevation.

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Fraenkel teaches a storage container (10, 20, 100) for forming ice blocks comprising a plurality of compartments (12, 22) defining respective maximum filling elevations thereof (top edges of the compartments) in a stable orientation of the container. Fraenkel further discloses each compartment may not be filled to the top but rather about six percent of the compartment may be left empty to allow the water in the compartment to expand during freezing (column 2, lines 45-48) which is considered equivalent to the at least one fill level is at a level below the respective maximum filling elevation. Shepherd shows a transparent bag (11) having indicia (12) indicating the position of at least one fill level of water (14) into the bag. Hughes shows a measuring cup/container (10, 18) comprising a compartment having a top edge/maximum filling level and at least one indicia indicating the position of at least one fill level below the maximum filling level.

It would have been obvious to one having ordinary skill in the art in view of Fraenkel and Shepherd or Hughes to modify the container of Spreen so each compartment includes at least one fill level disposed below the maximum filling elevation as taught by Fraenkel to allow the water in the compartment to expand during freezing and the at least one fill level comprises indicia indicating the position of the at least one fill level as taught by Shepherd or Hughes to provide more convenient for the user when filling the compartments.

As to claims 3 and 4, Fraenkel discloses the container formed from a transparent plastic material and the compartments are integrally molded with the container.

As to claims 7 and 12, Spreen discloses the container comprises a container body has a top surface and a complementary bottom surface. The container of Spreen is capable of being stackable one on top another in a stable orientation.

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5. Claims 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Andress et al. (5,356,026; hereinafter Andress'026). To the extent that Spreen further fails to show multiple instances of the container being stackable and each of the multiple instances of the container includes a lid being adapted to snap-fit onto the container. Andress'026 suggests a container assembly (10) comprising a container (12) and a lid (11) adapted to snap-fit (52, 55, 60, 61). Andress'026 further suggests the container includes a bottom surface (25-27) complementary to the lid (13, 14) so that multiple instances of the container with the lid fitted thereon are stackable. It would have been obvious to one having ordinary skill in the art in view of Andress'026 to modify the container of Spreen as modified so the container includes a lid adapted to snap-fit onto the container for better securing the contents within the container and the container are stackable to reduce space during storage.

### ***Response to Arguments***

Applicant's arguments with respect to all claims have been considered but are deemed to be moot in view of the new grounds of rejection.

### **Restriction Requirement**

Applicant's arguments with respect to the restriction requirement in the response are noted. They are not persuasive because the container can be filled with other articles instead of food and without the step of storing the container in a freezer. The requirement was made FINAL in the Office Action mailed on 9/27/2005.

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Section 112 Rejections

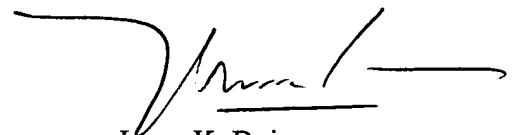
Applicant indicates "Claim 1 is silent about contents" which means claim 1 is directed to the container only. With respect to the phrase "the elevation at which ice reaching said maximum fill elevation would contract when melted" remains unclear because Applicant fails to indicate such phrase is positively recited or not.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is (571) 272-4552. If in receiving this Office Action, it is apparent to Applicant that certain documents are missing from the record for example copies of form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Ms. Errica Miller at (571) 272-4370. **Facsimile correspondence for this application should be sent to (571) 273-8300 for Formal papers and After Final communications.**

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lkb  
November 19, 2005



Luan K. Bui  
Primary Examiner